

No. 11419

United States

Circuit Court of Appeals

For the Ninth Circuit.

PAUL JOHN HUNT,

Appellant,

vs.

SECURITIES AND EXCHANGE COMMIS-
SION,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington
Northern Division

FILED

DEC 12 1946

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Seattle 1, Wash. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the United States District Court for the Western
District of Washington, Northern Division

No. 1560

In the Matter of:

PAUL JOHN HUNT.

ORDER

This matter having come on for hearing, and it appearing to the Court from the application of the Securities and Exchange Commission, verified by James E. Newton, and affidavit of W. Forbes Webber, filed herein, that the decree of this Court entered February 18, 1946, in the matter of Securities and Exchange Commission, Plaintiff, vs. Paul John Hunt, Defendant, Civil Action, File No. 1480, may have been defied and set at naught,

It Is Therefore Ordered, Adjudged, and Decreed: That James E. Newton be and he is hereby directed to prosecute the respondent, Paul John Hunt, on behalf of this Court; and it is further directed that a copy of this order is to be served on the respondent, together with a copy of the application and affidavit of W. Forbes Webber and exhibits thereto and order to show cause.

Done in open Court this 4th day of June, 1946.

LLOYD L. BLACK,

United States District Judge.

[Endorsed]: Filed June 4, 1946. [2]

[Title of District Court and Cause.]

APPLICATION FOR ORDER TO
SHOW CAUSE

1. On February 18, 1946, this Court in the cause entitled Securities and Exchange Commission, Plaintiff, vs. Paul John Hunt, Defendant, Civil Action, File No. 1480, entered a decree of permanent injunction enjoining and restraining Paul John Hunt from the commission of certain acts and practices. A copy of said decree of injunction is attached hereto, marked Exhibit A, and is incorporated and made a part of this application.

2. The defendant, Paul John Hunt, had actual knowledge of the contents of said decree and of all the proceedings in said cause No. 1480, heretofore referred to, and consented to the entry of said decree of injunction therein.

3. The defendant, since February 18, 1946, has engaged in the sale of the same securities arising out of and in connection with the sale of assignments of oil and gas leases on land located in Yakima and Benton counties, Washington, as described in and the subject of the complaint and the decree of injunction herein, continuously and without interruption and up to the time of the filing of this application, through the use of the mails. [3] The defendant has likewise caused to be carried through the United States mails such securities for the purpose of sale and for delivery after sale.

4. There never has been and there is no regis-

tration statement as to said securities on file with the Securities and Exchange Commission nor in effect; and the sale of said securities is not exempt from the provisions of the Securities Act by its terms or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

5. The conduct of the defendant, as aforesaid, has been a wilful and disobedient defiance of the decree of injunction of this Court entered February 18, 1946.

Wherefore, the plaintiff prays that an order to show cause issue requiring Paul John Hunt to show cause, if any he may have, on the 11th day of June, 1946, at 10:30 o'clock a.m., in the court room in the United States Court House in Seattle, Washington, why he should not be held in criminal contempt of the order of the Court dated February 18, 1946, and punished therefor, on account of his conduct subsequent to that date, and upon a return [4] of such order it be made absolute and the defend-

ant, Paul John Hunt, be adjudged in criminal contempt of court and punished therefor.

/s/ EDWARD H. CASHION,
Counsel.

/s/ DAY KARR,
Attorney.

/s/ JAMES E. NEWTON,
Attorney.

/s/ W. FORBES WEBBER,
Attorney.

SECURITIES & EXCHANGE
COMMISSION,

810 1411 Fourth Avenue
Building, Seattle 1, Wash-
ington. [5]

State of Washington,
County of King—ss.

James E. Newton, being first duly sworn, deposes and says:

He is an attorney for the Securities and Exchange Commission, an agency of the United States, and one of the attorneys of record in this cause; that he has read the foregoing application, knows the con-

tents thereof, and as to the matters therein he believes them to be true.

/s/ JAMES E. NEWTON.

Subscribed and sworn to before me this 27th day of May, 1946.

[Seal] /s/ DAY KARR,

Notary Public for Washington.

My commission expires Nov. 9, 1948. [6]

EXHIBIT A

In the United States District Court for the Western
District of Washington, Northern Division

Civil Action, File No. 1480

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

vs.

PAUL JOHN HUNT,

Defendant.

DECREE OF PERMANENT INJUNCTION

This cause coming on to be heard on the 18th day of Feb., 1946, on the verified complaint filed herein, and Paul John Hunt, defendant, not contesting the allegations contained therein, and upon stipulation of the parties hereto, on the motion of the

Securities and Exchange Commission, plaintiff, and the Court being fully advised in the premises,

It Is Hereby Adjudged, Ordered and Decreed that the defendant, Paul John Hunt, his agents, servants, employees, attorneys and assigns, and each of them, be enjoined from directly or indirectly:

(a) making use of any means or instruments of transportation or communication in interstate commerce, or of the mails, to sell investment contracts, certificates of interest or participation in a profit-sharing agreement, fractional undivided interests in oil or gas rights, or interests or instruments commonly known as securities, arising out of or in connection [7] with the sale of assignments of oil and gas leases on land located in Yakima or Benton counties, Washington, or any other securities, through the use or medium of any prospectus or otherwise;

(b) carrying such securities or causing them to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale;

unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities; provided that the foregoing shall not apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act of 1933, as amended.

Done in open Court this 18th day of February,
1946.

/s/ LLOYD L. BLACK,

United States District Judge.

Presented by:

/s/ JAMES E. NEWTON,

Attorney for Plaintiff.

The undersigned defendant, Paul John Hunt, having read and considered the provisions of the foregoing judgment, and admitting the jurisdiction of the Court over him and the subject matter of this action, and admitting the allegations contained in the complaint on file in this cause, consents to the entry of this judgment.

/s/ PAUL JOHN HUNT.

O.K. as to form:

/s/ LEWIE WILLIAMS,

Attorney for Defendant.

[Endorsed]: Filed June 4, 1946. [8]

In the United States District Court for the Western
District of Washington, Northern Division

No. 1560

In the Matter of:

PAUL JOHN HUNT.

AFFIDAVIT OF W. FORBES WEBBER

State of Washington,

County of King—ss.

W. Forbes Webber, being first duly sworn, on oath deposes and says:

I am an attorney for the Securities and Exchange Commission, attached to the Seattle Regional Office.

On April 12, 1946, I personally interviewed Paul John Hunt at his office in the Arcade Building, Seattle, Washington, with regard to the sales activities engaged in by him since the entry of the decree of injunction on February 18, 1946. Mr. Hunt at that time stated to me that, on advice of his attorney, after the entry of the decree of injunction he and his sales organization had continued their activities in the sale of assignments of oil and gas leases on land located in Yakima and Benton counties, Washington, to residents of the State of Washington, using the mails in connection with such sales and for the purpose of delivering the securities after sale; and he stated to me that the securities which he had been selling were identical in every respect with those which he and his sales organization had [9] sold prior to the entry of the decree of injunction, as described in and the

subject of the complaint and the decree of injunction:

Mr. Hunt stated that these securities which had been sold since February 18, 1946, were being sold for the same purpose as the securities sold prior to February 18, 1946; that is, to raise money to finance the continuation of drilling operations and the exploitation of oil and gas in Yakima and Benton counties, Washington. Mr. Hunt stated to me at that time that the same procedure was being followed in connection with the sales made after February 18, 1946, as had been followed prior to that date; namely, when his agents made a sale a signed subscription was obtained from the purchaser setting forth the number of units purchased in the so-called "Paul John Hunt Pool" and the price paid therefor, and at the same time a receipt was given by the sales representative acknowledging receipt of the amount of money paid at the time of the subscription. He stated that in some instances, when the down payment amounted to only 20% of the total investment, this down payment was retained by the sales representative as his or her commission, and in those instances the sales representative would forward through the mails to him (Hunt) the signed subscription blank together with a carbon copy of the receipt given to the investor, for the purpose of the records kept in the Seattle office. However, if the total purchase price was paid at the time the subscription was entered into, it was then the custom for the sales representative in Spokane or Yakima to forward to him (Hunt)

through the mails the amount of the subscription less the sales representative's 20% commission. Mr. Hunt stated that upon receipt [10] in Seattle of the subscription blank and receipt a form letter was then sent through the mails to the purchaser acknowledging receipt of the down payment and reciting the balance to be paid in monthly installments. Attached hereto, marked Exhibit A, is a sample copy of such form letter, which was given to me by Mr. Hunt. Mr. Hunt stated that upon full payment of the subscription copies of the contracts evidencing the purchaser's interest in the Paul John Hunt Pool were forwarded through the mails to the purchaser.

Mr. Hunt stated to me at that time that this method of accepting and acknowledging subscriptions and delivering evidences of interests in the Pool was followed by him in connection with the sales both before and after the entry of the decree of injunction on February 18, 1946.

Mr. Hunt stated that the sales activities during the latter part of February and March were disappointingly small because of the status of the development on the Snipe's Mountain No. 1 well then being drilled, which operations had been halted due to damage to the drilling rig.

Mr. Hunt arranged for his bookkeeper, Miss Alice Anderson, to make available to me information from his sales ledger and index cards reflecting sales and deliveries after sale since February 18, 1946; and my examination of the ledger and index cards disclosed the following information

with respect to sales and deliveries after sale by Paul John Hunt since February 18, 1946: [11]

Purchaser	Amount of Purchase	Date of Sale	Date of Delivery
-----------	--------------------	--------------	------------------

Jennie H.

McCray	\$100 for 4 units	2-23-46	
--------	-------------------	---------	--

1404 Bolystone Ave.,

Seattle, Wash.

(New Member.)

Guy E.

Powell	\$ 50 for 2 units	3- 8-46	3-11-46
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Rt. 4, Box 666,

Renton, Wash.

(N. S. Navy.)

(New Member.)

George H.

Walters	\$500 for 20 units		2-23-46
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910½ W. 2nd Ave.,

Spokane, Wash.

(New Member.)

Dean and Dorris

Donaldson	\$ 50 for 2 units		2-23-46
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824 25th,

Spokane, Wash.

(New Member.)

Delia and Jesse

Wallace	\$100 for 4 units	3-28-46	
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Okanogan, Wash.

(New Member.)

Under instructions from Mr. Hunt, Miss Anderson also furnished me the attached copies of letters of transmittal used in connection with certain of the above described sales.

Mr. Hunt stated to me at that time that the securities in the form of interests in assignments of oil and gas leases on land located in Yakima and Benton Counties, Washington, which he was then selling were all part of the same offering which was commenced by him in January, 1940, for the purpose of financing the development of gas and oil in Yakima and Benton counties, [12] where the leases were located, and that it was his intention to continue the sale of these same interests.

/s/ W. FORBES WEBBER.

Subscribed and sworn to before me this 24th day of May, 1946.

[Seal] /s/ PAYNE KARR,

Notary Public for Washington.

My commission expires May 7, 1948. [13]

EXHIBIT A

PAUL JOHN HUNT

Not Incorporated

Sole Developer Rattlesnake Hills

Oil and Gas Leases

5147 Arcade Building — Seattle, Washington

Eliot 8189

505 Radio Central Building

Spokane, Washington — Riv. 8362

We acknowledge with thanks your subscription for acres of oil and gas leases in our Rattlesnake Hills Project, on which you made a down payment of \$. and agree to pay the balance in monthly installments of \$. each.

When you have completed payments on subscription, we will send you copies of contracts showing land description.

We appreciate very much your cooperation with our efforts to develop the large quantities of oil and gas that we all believe will be found on our leasehold in Benton and Yakima counties of this state. You can further help this good cause by calling the project to the attention of your relatives and friends.

Yours very truly,

PAUL JOHN HUNT.

PJH:b

February 23, 1946

Mr. George H. Walters,
910½ W. 2nd Avenue,
Spokane, Washington.

Dear Mr. Walters:

Enclosed you will find copies of contracts showing land descriptions on twenty-five acres of oil and gas leases in our Rattlesnake Hills Pool. These leases are in exchange for 5000 shares Juneau Mines stock.

We sincerely trust this exchange will prove highly profitable both in your mine and our oil and gas development program.

Thanking you for your cooperation, we are,

Yours very truly,

PAUL JOHN HUNT.

PJH:@

Enc. [15]

February 23, 1946

Dean and Dorothy Donaldson,
W. 824 25th,
Spokane, Washington.

Dear Leaseholders:

We are in receipt of full payment on your subscription for two and one-half acres of oil and gas leases in our Rattlesnake Hills Pool and you will find enclosed copies of contracts showing land descriptions.

We appreciate your cooperation with our efforts to develop a commercial supply of oil and natural

gas on our leasehold in Benton and Yakima Counties, Washington.

Please feel free to call at our Seattle office whenever you may be in this vicinity.

Yours Very truly,

PAUL JOHN HUNT.

PJH:@

Enc. [16]

March 11, 1946

Mr. G. E. Powell,
Rt. 4, Box 666,
Renton, Washington.

Dear Mr. Powell:

We are in receipt of full payment on your subscription for an additional two and one-half acres of oil and gas leases in our Rattlesnake Hills Pool and you will find enclosed copies of contracts showing land descriptions. This makes your total holdings in our pool five acres.

We appreciate your cooperation in our endeavor to obtain a commercial supply of oil and gas on our leasehold in Benton and Yakima Counties, Washington.

Yours very truly,

PAUL JOHN HUNT.

PJH:@

Enc.

[Endorsed]: Filed June 4, 1946. [6-a]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

This matter having come on for hearing, and it appearing to the Court on examination of the application for order to show cause and affidavit of W. Forbes Webber, filed herein, that a reasonable cause exists for believing Paul John Hunt has defied and set at naught the decree of injunction of this Court entered herein February 18, 1946, in that cause entitled Securities and Exchange Commission, Plaintiff, vs. Paul John Hunt, Defendant, Civil Action, File No. 1480, and is guilty of criminal contempt as indicated in the verified application attached hereto:

Now, Therefore, It Is Ordered, Adjudged and Decreed: That Paul John Hunt be and appear before this Court in the court room in the United States Court House in Seattle, Washington, on the 11th day of June, 1946, at 10:30 o'clock a.m., then and there to show cause, if any he may have, why he should not be held in criminal contempt for violation of the decree of injunction of this Court entered February 18, 1946, [17] and punished therefor, as prayed for in the application of the Securities and Exchange Commission attached hereto.

Done in open Court this 4th day of June, 1946.

LLOYD L. BLACK,

United States District Judge.

Presented by:

/s/ JAMES E. NEWTON,

Attorney.

[Endorsed]: Filed June 4, 1946. [18]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed by the undersigned that the facts herein set forth may be considered by the Court at the hearing in the above entitled matter, and that this stipulation may be put in evidence.

That since on or about January 1, 1940, Paul John Hunt has been and is now selling securities, within the meaning of Section 2(1) of the Securities Act of 1933, as amended, namely, investment contracts, certificates of interest or participation in a profit-sharing agreement, fractional undivided interests in oil and gas rights, and interests in instruments commonly known as securities, arising out of and in connection with the sale of assignments of oil and gas leases on land located in Yakima and Benton counties, Washington, and in the sale of such securities has been and is now using the mails, and has been and is now directly and indirectly carrying such securities and causing

them to be carried through the mails for the purpose of sale and delivery after sale.

That since the commencement of such sales in January, 1940, and continuing up to the date hereof, the said securities sold by Paul John Hunt have all been part of the same offering or issue, being sold for the same single purpose, namely, to finance the exploitation of oil and gas in the areas in which such leaseholds are located. That although the prices at which such securities have been offered to the public have ranged from \$16.00 to \$25.00 per unit of $1\frac{1}{4}$ acres, the persons so purchasing all obtain equal rights under the pool arrangement in which they become members by their purchase, dependent only upon the amount of acreage held, irrespective of the price paid, the offering made in January, 1940, and continuing to the date hereof being a single, continuous offering [19] for one and the same purpose, namely, financing from the proceeds thereof the exploitation of oil and gas in Yakima and Benton counties; that it is intended by Paul John Hunt to continue the sale of said issue of securities until all the acreage has been sold or sufficient has been sold to the public to fully finance said purposed exploitation.

That the sales of such securities have included a few sales to residents of Idaho and California, and in the sale of such securities the mails were used by Paul John Hunt and such securities were sent and caused to be sent through the mails for the purpose of sale and delivery after sale. Since

the decree of injunction against Paul John Hunt entered by this Court on February 18, 1946, however, the sale of such securities has been restricted exclusively to persons resident in the State of Washington.

That since the entry of said decree of injunction Paul John Hunt has been and is now continuing the sale of securities which are identical in every respect to those sold prior thereto. That the securities now being sold are a part of the same offering, issue, general plan of financing, and for the same purpose as those securities sold prior to said decree to the residents of Washington, Idaho, and California, the sale of which securities said decree restrained and enjoined. That the mails have been and are now being used in the sale and delivery after sale of such securities by Paul John Hunt.

That Paul John Hunt and his agents and sales representatives at all times herein mentioned have been and are now residents of and doing business in the State of Washington.

That no registration statement with respect to such securities is now or ever has been in effect with the Securities and Exchange Commission. [20]

That the affidavit of W. Forbes Webber on file herein truly reflects and sets out the manner and method of selling said securities both before and after the entry of said decree, and the contents of said affidavit and the exhibits attached thereto are incorporated and made a part of this stipulation as fully as if set out herein. That Paul John Hunt

had actual knowledge of the contents of said decree of injunction and of all the proceedings in said cause, Civil Action No. 1480, heretofore referred to.

Dated at Seattle, Washington, this 3rd day of June, 1946.

SECURITIES & EXCHANGE
COMMISSION,

By /s/ JAMES E. NEWTON,
Attorney.

/s/ PAUL JOHN HUNT.

/s/ LEWIE WILLIAMS and

/s/ FRED'K R. BURCH,

Attorneys for Paul John
Hunt.

[Endorsed]: Filed June 11, 1946. [21]

[Title of District Court and Cause.]

COURT'S ORAL DECISION.

Black, J.

When this matter was presented to me on the 11th of June I felt that under the evidence and the stipulations and the law as given to me that John Paul Hunt was in contempt. He agreed voluntarily to abstain from pursuing the same course of action until my decision, and advised me that he was not anxious to hurry me. Therefore, I felt that no one could be hurt if I took sufficient time to satisfy me that my impression was correct, or convince me that I was mistaken.

I am still of the opinion that my impression on June 11th was right and in accord with the facts and the law.

The statute is clear as I read it. In the absence of my files, I may say this to the parties, that it is not necessary that the mails be used between states. Congress has jurisdiction of the mails; Congress had the right to say that the mails should not be used; Congress had the right to say that the mails should not be used between Seattle and Spokane as well as between Spokane and Coeur d'Alene. Between Spokane and Coeur d'Alene, of course, the Washington-Idaho boundary intervenes. The statute is definite that the mails are not to be used except under certain special circumstances. One of the special circumstances was that the entire issue was sold in one state by a seller in that state to persons residing in that state. The exemption was not for an issue which was largely within the state.

The complaint in cause No. 1480, which was filed [22] February 18, 1946, alleged that "Since on or about January 1, 1940, defendant has been and now is selling securities * * * and in the sale of such securities has been and is now directly and indirectly using the mails and the means and instruments of transportation and communication in interstate commerce, and has been and is now directly and indirectly carrying such securities and causing them to be carried through the mails and in interstate commerce, by means and instruments of transportation, for the purpose of sale and delivery after sale;" and that "The defendant will, unless en-

joined, continue to engage in the acts and practices set forth in this complaint.”

On the 18th of February, 1946, the defendant Paul John Hunt came personally into court and signed this statement in writing:

“The undersigned defendant, Paul John Hunt, having read and considered the provisions of the foregoing judgment, and admitting the jurisdiction of the Court over him and the subject matter of this action, and admitting the allegations contained in the complaint on file in this cause, consents to the entry of this judgment.”

I asked him under oath, “Are you familiar with all the contents of the complaint upon which that decree is based?” His answer was, “Yes, sir.”

In the stipulation presented to me, which stipulation is signed by Paul John Hunt as well as by his counsel, it is stated, “that the sales of such securities have included a few sales to residents of Idaho and California, and in the sale of such securities the mails were used by Paul John Hunt, and such securities were sent and caused to be sent through the mails for the purpose of sale and delivery after sale.”

The prosecution of this contempt proceeding depended and had a right to depend upon such stipulation, and depended [23] and had a right to depend upon the judgment in the original action No. 1480 and upon the statement of Mr. Hunt that he had read the complaint.

It is true that on the 11th of June Mr. Hunt was sworn as a witness and to a considerable degree

contradicted the allegations of the complaint and contradicted the statements of his own stipulation.

There was some cross examination which indicated at least that the government would have been able to produce testimony of more outside state sales than he stated. But even if Mr. Hunt's statement under oath on the 11th was correct and if his stipulation and the original judgment are wrong,—even then it seems to me that he removed himself from the exemption because he concedes that the issue was not sold entirely within the state to those resident within the state.

I am sorry that my own files are not present so that I might have the law before me as well as the opinion of counsel for the Commission, rendered about 1937 according to my memory. As I remember the statute, it authorizes a prosecution criminally for a violation, and authorizes a sentence of not more than five years in the penitentiary, or, a fine of five thousand dollars, or both. (Mr. Newton nods concurrence.)

I can be mistaken; Mr. Newton says I am correct in my recollection. In any event the Congress did authorize a very substantial penalty.

Mr. Hunt came into Court on the 11th and conceded that in face of the decree of February 18, he had knowingly and intentionally used the mails many times, although, of course, the mails, according to his testimony were used to persons in the state of Washington.

It is clear that Mr. Hunt was advised by his counsel [24] that he had the right to use the mails

providing the mails were used as intrastate mails. I am sure that his counsel were mistaken. The statute prohibits use of interstate commerce or of the mails. There is nothing in the statute which says that interstate mails are taboo; the statute says the mails shall not be used. I do not know how a person can write a letter at Spokane for Seattle and have such letter carried by the postal authorities without having employed the mails.

I have been disturbed as to the penalty. Unquestionably, Paul John Hunt thought he had the right to do as he did. However, the advice of counsel is never a defense. Every man is presumed to know the law. That means that if no one could be held accountable except it were demonstrated he knew he was mistaken, there would be no practical enforcement. I had a man in McNeills Island once, who wished to get out, seriously contend to me that since he did not know that it was against federal law to rob a state bank which was insured federally, that I should release him. He was a lawyer; he followed his own legal advice. He thought that he could rob a state bank and be amenable only to state prosecution. He was convicted and sentenced. He did not like McNeills Island, and appealed to me. I made him stay. The Circuit Court of Appeals said I was correct. Now, he sought legal advice. Both he and his lawyer, because they were the same individual, thought that the federal law did not apply.

In this instance, of course, Mr. Paul John Hunt sought someone other than himself to advise him; but if the mistake of the lawyer would be a defense,

then a man would always seek that attorney who was apt to make a mistake.

The law is effective. Paul John Hunt is in contempt of court in having violated the provisions of the decree of February 18 in cause No. 1480. However, I am satisfied that in [25] imposing the sentence the Court should consider his good faith and the good faith of his counsel. I should consider one thing further. I think the decree could have been a bit plainer than it was, that is the decree of February 18, 1946.

It seems to me that a fine of Four Hundred Dollars is not inappropriate, and I would say a fine of four hundred dollars without costs.

Do you have any substantial objection, Mr. Newton?

Mr. Newton: No objection.

The Court: Counsel? (Addressing Mr. Burch.)

Mr. Burch: I would like to ask, if your Honor please, just exactly what this fine would signify. Now, in the first place, Mr. Hunt was dealing with intrastate business by permission of the State. Inadvertently, there was a sale made outside of the state. I say "inadvertently" because I base my conclusion upon the fact that never once has Mr. Hunt ever solicited any business outside of the state that I know of. He has no agents——

The Court: (Interposing): Well, counsel, as I say, here was a complaint which came before me on February 18,, and in it was alleged that since on or about January 1, 1940, the defendant has been and now is selling securities and in the sale of such

securities has been and is now directly and indirectly using the mails and the means and instruments of transportation and communication in interstate commerce.”

Mr. Burch: If your Honor please——

The Court: So that was presented to me——

Mr. Burch: ——I simply referred to that so that I might ask the question.

The Court: All right.

Mr. Burch: Now inasmuch as the Court—there was, and properly so, an injunction issued. The injunction was that [26] we must not repeat it. Now, he has never repeated any interstate business, but he cannot do intrastate business unless he can use the mails.

Now, if he is fined four hundred dollars, does that mean that he still cannot use the mails?

The Court: Certainly; if he uses the mails, then he will be guilty of contempt again.

Mr. Burch: He will be guilty again? So that the business which he has built up for years, by an inadvertent sale unsolicited, is destroyed, and his investors—and they are numerous—will stand to lose their entire investment, because we cannot conduct business without using the mails. It is quite serious.

The Court: Well, counsel, just a minute. This decree which he signed, and which his counsel O.K.’d as to form, enjoined the defendant from directly or indirectly (a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails. It did not say inter-

state mails. And he was also enjoined (b) from carrying such securities or causing them to be carried through the mails or in interstate commerce. Now, if Mr. Hunt is anxious to protect the interest of his clients, he can comply with the statute. He can register as required.

Mr. Burch: In interstate commerce to do intrastate business,—it is sort of a conundrum.

The Court: No, it is not a conundrum. The law says he shall not use mails at all to sell securities except in some special circumstance he can sell and issue entirely and completely in intrastate activity; not interstate but intrastate. There is no conundrum about it. The law is that he is not to use the mails at all. [27]

Now, you wish me to repeal the law.

Mr. Burch: We will accept your Honor's judgment in the matter.

The Court: He can register if he is entitled to registration.

Mr. Burch: That is another problem.

The Court: Well, that is his problem. It was suggested by the attorney for the Commission that since these sales of some two thousand dollars or more were made in violation of the decree, that I should set them aside. I stated that I felt attempting to unscramble what had cooked since February 18 was too great a task and that I would not do that. If these people bought from Mr. Hunt knowing that he was not registered, they ran the risks. If he represented to them that he was registered, of course, they have their remedy against him.

I am assuming that the buyers were not depending upon the Securities and Exchange Commission.

I have eliminated the costs by virtue of the good faith of Mr. Hunt and the good faith of his counsel. If he had not been in good faith, the court would have been asking as to an appropriate place for his custody.

I may let him know that a violation of the decree is serious, and therefore, if he should repeat it, I would not be able to say he was again in good faith.

The appropriate order may be presented after service.

Mr. Newton: Any particular time to present it?

The Court: I don't care. Mr. Hunt will understand that either before or after entry of the order the decree of February 18 is in effect. Therefore, he cannot afford to use the mails in connection with this issue. He cannot use any method of interstate commerce or communication, mails or otherwise. [28] In intrastate communication he cannot use the mails, nor can he use the mails interstate. He cannot use the mails between Bellingham and Seattle. He cannot use the mails or other methods of transportation or communication between Seattle and Portland, Oregon, for instance.

How would next Monday be at 11:00 o'clock?

Mr. Newton: Very well.

The Court: Satisfactory, Mr. Burch?

Mr. Burch: Yes.

CERTIFICATE

I, James R. Royse, do hereby certify that I am official court reporter for the above-entitled Court, and as such was in attendance upon the hearing of the foregoing matter.

I further certify that the above transcrip is a true and correct record of the matters as therein set forth.

JAMES R. ROYSE,
Official Court Reporter.

[Endorsed]: Filed Aug. 6, 1946. [29]

In the United States District Court for the Western
District of Washington, Northern Division

No. 1560

In the Matter of:

PAUL JOHN HUNT

ORDER AND JUDGMENT

This matter having come on before this Court for hearing the 11th day of June, 1946, on application of the Securities and Exchange Commission, and James E. Newton having been appointed and directed to prosecute the defendant Paul John Hunt on behalf of this Court, and it appearing to the Court from the stipulation on file in the matter and the evidence adduced at that time that Paul John Hunt did violate the decree of permanent injunc-

tion entered by this Court on February 18, 1946, in the matter of Securities and Exchange Commission, Plaintiff, vs. Paul John Hunt, Defendant, Civil Action File No. 1480, as set forth in the application of Securities and Exchange Commission, the defendant Paul John Hunt with actual knowledge of the contents of said decree of injunction and of all the proceedings in said cause, Civil Action No. 1480, having since the entry of said decree of injunction on February 18, 1946, sold securities in the State of Washington and to residents of said state only, which securities are identical in every respect and part of the same issue, offering, general plan of financing and for the same purpose as those securities sold prior to said decree to the residents of Washington, Idaho, and California, the sale of which securities said decree restrained and enjoined, and the mails having been used in the sale and delivery after sale of such securities by the [30] defendant Paul John Hunt since the entry of said decree on February 18, 1946, no registration statement being in effect with the Securities and Exchange Commission and no exemption from the provisions of Section 5 of the Securities Act of 1933, as amended, being available with respect to such securities,

It Is Hereby Ordered, Adjudged, and Decreed that Paul John Hunt be and he is hereby held in contempt of this Court for violation of the decree of permanent injunction entered against him on February 18, 1946, in the matter of Securities and Exchange Commission vs. Paul John Hunt, as

charged in the application of Securities and Exchange Commission on file herein; and,

It Is Further Ordered that the contemnor Hunt pay a fine to the United States of America in the sum of \$400.00 without costs and shall stand committed until said fine is paid.

Done in open Court this 12th day of August, 1946.

LLOYD L. BLACK,

United States District Judge.

Presented by:

JAMES E. NEWTON

Attorney appointed by Court.

Approved as to form:

LEWIE WILLIAMS and

FRED'K R. BURCH.

Attorneys for Paul John
Hunt.

[Endorsed]: Filed Aug. 12, 1946. [31]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE UNITED
STATES CIRCUIT COURT OF APPEALS,
NINTH CIRCUIT

Please take notice that the defendant, Paul John Hunt, whose address is 5103 Arcade Building, Seattle, Washington, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the order made and entered in the above-

entitled action and filed in the office of the Clerk of the District Court of the United States for the Western District of Washington, Northern Division, on the 12th day of August, 1946, adjudging appellant guilty of contempt of Court on the charge of violating an injunctive order previously entered on February 18, 1946, under Civil Action file No. 1480, in the said District Court, and ordering appellant to pay a fine of Four Hundred Dollars.

Dated at Seattle this 21st day of August, 1946.

LEWIE WILLIAMS
FRED'K R. BURCH

Attorneys for Appellant.

[Endorsed]: Filed Aug. 21, 1946. [32]

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the Above-entitled Court:

You will please prepare the record on appeal in the above-entitled cause, said record to contain the following designated instruments:

1. Order Appointing Attorney.
2. Decree of Permanent Injunction.
3. Application for Order to Show Cause.
4. Order to Show Cause.
5. Stipulation as to Facts.

6. Webber's Affidavit and Attached Exhibits.
7. Hunt's Testimony at the Hearing.
8. Court's Oral Decision.
9. Order and Judgment.
10. Notice of Appeal.

LEWIE WILLIAMS

FRED'K R. BURCH

Attorneys for Appellant.

Due service of the foregoing Praecipe acknowledged this 9 day of September, 1946.

JAMES E. NEWTON

Attorney for Court.

[Endorsed]: Filed Sept. 9, 1946. [33]

[Title of District Court and Cause.]

ORDER

It appearing to the Court that pursuant to his notice of appeal in the above entitled action filed under date of August 21, 1946, the appellant has served upon appellee and filed with the above entitled Court a designation of the portions of the record, proceedings, and evidence to be contained in the record on appeal, which designation fails to include the complaint filed in Civil Action File No. 1480 in the above entitled Court on February 18, 1946, and upon which complaint the decree of permanent injunction included in appellant's designation is based,

It Is Hereby Ordered that the Clerk of the above entitled Court be and he is hereby directed to include as part of the record on appeal in the above entitled matter the complaint filed in Civil Action File No. 1480.

Done in open Court this 12th day of September, 1946.

LLOYD L. BLACK

United States District Judge.

Presented by:

JAMES E. NEWTON

Attorney appointed by Court.

[Endorsed]: Filed Sept. 12, 1946. [34]

In the United States District Court for the Western
District of Washington, Northern Division

Civil Action, Filed No. 1480.

SECURITIES AND EXCHANGE COMMIS-
SION,

Plaintiff,

vs.

PAUL JOHN HUNT,

Defendant.

COMPLAINT

1. It appears to the plaintiff that the defendant, Paul John Hunt, is engaged and about to engage in acts and practices which constitute and will constitute violations of Section 5(a)(1) and 5(a)(2) of

the Securities Act of 1933, 15 U.S.C. 77e (a)(1) and 77e(a)(2); and the plaintiff, pursuant to Section 20(b) of the Act, 15 U.S.C. 77t(b), brings this action to enjoin such acts and practices.

2. This action arises under Section 22 (a) of the Securities Act of 1933, 15 U.S.C. 77v(a), as hereinafter more fully appears.

3. Since on or about January 1, 1940, the defendant has been and is now selling securities, namely, investment contracts, certificates of interest or participation in a profit-sharing agreement, fractional undivided interests in oil and gas rights, and interests and instruments commonly known as securities, arising out of and in connection with the sale of assignments of [35] oil and gas leases on land located in Yakima and Benton counties, Washington, and in the sale of such securities has been and is now directly and indirectly using the mails and the means and instruments of transportation and communication in interstate commerce, and has been and is now directly and indirectly carrying such securities and causing them to be carried through the mails and in interstate commerce, by means and instruments of transportation, for the purpose of sale and delivery after sale.

4. No registration statement with respect to such securities is in effect with the Securities and Exchange Commission.

5. The defendant will, unless enjoined, continue to engage in the acts and practices set forth in this complaint.

Wherefore, the plaintiff demands a preliminary and a final injunction enjoining the defendant, Paul John Hunt, his agents, servants, employees, attorneys and assigns, and each of them, from directly or indirectly:

(a) making use of any means of instruments of transportation or communication in interstate commerce, or of the mails, to sell investment contracts, certificates of interest or participation in a profit-sharing agreement, fractional undivided interests in oil or gas rights, or interests or instruments commonly known as securities, arising out of or in connection with the sale of assignments of oil and gas leases on land located in Yakima or Benton counties, Washington, [36] or any other securities, through the use or medium of any prospectus or otherwise.

(b) carrying such securities or causing them to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale; unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities; provided that the foregoing shall not apply to any security or transac-

tion which is exempt from the provisions of Section 5 of the Securities Act of 1933, as amended.

/s/ EDWARD H. CASHION
Counsel.

/s/ DAY KARR
Regional Administrator.

/s/ JAMES E. NEWTON
Attorney.

/s/ W. FORBES WEBBER
Attorney. [37]

State of Washington,
County of King—ss.

James E. Newton, being duly sworn, deposes and says that he is an attorney for the Securities and Exchange Commission, plaintiff herein, that he has read the foregoing complaint, that he knows the contents thereof; and that to the best of his knowledge and belief there is good ground to support the allegations therein.

JAMES E. NEWTON

Subscribed and sworn to before me this 18 day of February, 1946.

[Seal] DAY KARR
Notary Public for Washington. My commission expires: Nov. 9, 1948.

[Endorsed]: Filed Feb. 18, 1946. [38]

In the United States District Court for the Western
District of Washington, Northern Division

No. 1560

In the Matter of:

PAUL JOHN HUNT

CERTIFICATE OF CLERK OF U. S. DIS-
TRICT COURT TO TRANSCRIPT OF
RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 38, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above entitled cause as is required by designation of counsel filed and shown herein, together with the complaint filed in civil action No. 1480, included herein under direction of the Court, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the foregoing together with the reporter's transcript of testimony and proceedings transmitted as a part hereof, constitute the record on appeal herein from the order and judgment dated August 12, 1946, of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the foregoing is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit; [39]

Clerk's fees for making record, certificate or return:

7 pages at 40c	\$ 2.80
32 pages at 10c	\$ 3.20
(Copies furnished)	
Appeal Fee	\$ 5.00
Total	\$11.00

I hereby certify that the above amount has been paid to me by the attorneys for the appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 14th day of September, 1946.

MILLARD P. THOMAS

Clerk.

[Seal] /s/ TRUMAN EGGER

Chief Deputy Clerk. [40]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 1560

In the Matter of

PAUL JOHN HUNT.

June 11, 1946.

PAUL JOHN HUNT

being first duly sworn, testified in his own behalf
as follows:

Direct Examination

By Mr. Burch:

Q. State your name.

A. Paul John Hunt.

Q. And you are the Paul John Hunt who is
to answer and show cause, if any you have, on a
charge of contempt [1*] of court? A. Yes.

Q. How long have you been doing business in
the State of Washington?

A. Since October, 1939.

Q. Now from whom did you derive the authority
to sell your securities in the state of Washington?

A. State Department of Licenses.

Q. Did you secure it at that time?

A. I did.

Q. And is it in force and effect today?

A. Yes, sir.

Q. And any sale that you made in the state of

(Testimony of Paul John Hunt.)

Washington to a citizen of the state of Washington is under the permission of the Director of Licenses of the state of Washington, is that true?

A. That is right.

Q. Now, did you ever at any time have an agency soliciting the sale of securities in interstate commerce? A. No, sir.

Q. What have your sales been confined to outside of the two sales—I believe it was one in Nevada and one made in California,—to what have your sales been confined?

A. The state of Washington. [2]

Q. Did you ever apply to the Federal Securities & Exchange Commission for permission to sell in interstate commerce? A. No, sir.

Q. You never applied for permission to sell in interstate commerce as I understand you?

A. No, sir.

Mr. Burch: That is all.

Mr. Newton:: Will you mark this for identification, please?

(Four documents marked Petitioner's Exhibits 1, 2, 3 and 4, for identification.)

Q. (By Mr. Burch) Since this order of injunction was served upon you, have you made any sales to anyone outside of to citizens of the state of Washington and in the state of Washington by virtue of your authority so to do from the Director of Licenses of the state of Washington?

The Court: On the court's own motion I am

(Testimony of Paul John Hunt.)

going to strike that question. I am confused by it. The answer, therefore, will not help me. I think there are a number of questions embraced in one; so that the question is stricken.

Mr. Burch: Well, I don't believe it is germane.

The Court: I am not holding it is not germane. It may be offered. It may not be germane, but the question [3] was long and involved and leading. I would not know what to do with the answer. If it is important, I would suggest that you break it up into short questions.

Q. (By Mr. Burch) I will ask you this question, since service of the injunction upon you to cease sending your securities through the mail, have you made any sales to anybody but a citizen of the state of Washington?

A. No, sir.

Mr. Burch; That is all. That is admitted in the stipulation, that last question.

Cross Examination

By Mr. Newton:

Q. Mr. Hunt, you stated on direct examination that you have maintained no agencies for the solicitation and sale of securities in interstate commerce? A. That is right.

Q. Now, what do you mean by agencies? Do you mean a person maintained outside of the state, or what do you mean by the word "agency"?

A. I means sales people.

(Testimony of Paul John Hunt.)

Q. You do not maintain any salesmen outside of the state of Washington to sell securities to persons who are not resident in the state of Washington. Is that what you mean? [4]

A. That is what I mean.

Q. Did you mean to include more than that or anything else? A. No.

Q. You did not mean, I take it, that you did not use the mails for sales to persons who are not residents in the state of Washington?

A. I admitted that in the stipulation.

Q. That is right. So that there is no confusion, the use of the mails was not included in your meaning of the word "agency."

A. That is right.

Q. You mean you had no personal agents?

A. That is right.

Mr. Burch: Now, this applies to the case before the injunction was issued.

Mr. Newton: That is correct. That is my understanding. That is what your question was directed to, not to activities before the injunction. I don't want any confusion as to what he meant by "agencies."

Q. (By Mr. Newton) Now, you are not in any way desiring to draw back from the stipulation as to the use of the mails? A. No.

Q. And that there were sales made to at least some persons [5] who are not residents of the state of Washington? A. Yes, that is so stipulated.

Q. That is correct?

(Testimony of Paul John Hunt.)

Mr. Burch: Again I repeat that is before the injunction.

Mr. Newton: That is right.

Mr. Burch: Not after.

Q. (By Mr Newton) Now, after the injunction was entered on February 18, 1946, restraining you from further sales of securities through use of the mails or means of interstate commerce unless and until registration was in effect, I understand you did make some additional sales, is that correct?

A. In the state of Washington.

Q. To residents in the state of Washington?

A. Yes.

Q. Mr. Hunt, those sales were made through use of the mails, were they not? May I hand you what has been marked Petitioner's Exhibit——

The Court: Just a minute. Is that question answered?

Mr. Newton: No, it has not been answered, but I think if I provide the witness with the exhibit, it might make it easier for him to answer the question.

The Court: All right. [6]

Mr. Newton: I will withdraw it.

Mr. Burch: Read the question.

(Reporter reads question.)

A. I don't believe so.

Q. (By Mr. Newton) They were not?

A. No.

Q. Let me hand you Petitioner's Exhibits 2 and 3——

(Testimony of Paul John Hunt.)

Mr. Burch: If your Honor please, I think that the question should be clarified. We object to it in the form that it is asked. He asked this merely as a general question,—and that is, did you use the mail? He does not distinguish by asking did you use the mails in interstate commerce or did you use the mails in intrastate commerce. Those are two vastly different questions.

The Court: I think if the question on cross examination is not clarified enough in your opinion, you should use the rebuttal rather than delay cross examination.

Q. (By Mr. Newton) Handing you Petitioner's Exhibits 2 and 3 for identification, please state what they are.

A. Exhibit 3 is a copy of an analysis of an oil sand by Gutberlet Laboratories, Seattle, Washington.

Q. Mr. Hunt, is that a mimeographed copy of a letter many of which were sent through the mails to your lease [7] holders in connection with the solicitation of further sales since the entry of the decree on February 18, 1946?

Mr. Burch: Now, if your Honor please, I object to that question on the ground that it does not distinguish; the question is, did he use these in interstate commerce.

The Court: Objection overruled.

Mr. Burch: Did he use the mails in interstate or intrastate commerce. That is the crux of the question.

(Testimony of Paul John Hunt.)

The Court: That may be the crux, but there is no reason I should not hear this evidence. If after I have heard it nothing has been established, Mr. Hunt is not hurt. Objection overruled.

A. There was a cut made of the original letter, and this is made from the cut, and this was sent out, yes.

Q. And approximately how many of those were sent out through the mails?

A. Oh, something over a thousand.

Q. And they were sent out for the purpose of soliciting further sales?

A. In the state of Washington.

Q. To residents in the state of Washington.

A. That is right. [8]

Mr. Newton: I would like to offer what has been marked Petitioner's Exhibit 3 for identification.

The Court: Admitted.

(Petitioner's Exhibit 3 for identification received in evidence.)

Q. (By Mr. Newton) Referring now to Petitioner's Exhibit 2, Mr. Hunt, and the envelope attached thereto, was that letter sent out by your office to the addressee named on that envelope?

A. It was.

Q. And you will notice on the margin that there is apparently a legend of some kind which does not appear on Exhibit No. 3. What was the purpose of that, if you will just state?

A. The statement made on the margin was

(Testimony of Paul John Hunt.)

placed on every one sent to lease holders who had moved out of the state since they purchased leases.

Q. So this letter was sent,—the letter which is marked Petitioner's Exhibit 2, which except for the legend on the bottom and on the margin is the same as 3,—was sent to Thomas Eccleston in Wilmington, California, through the mails?

A. It was.

Q. Also to solicit sales, was it?

A. No, sir. [9]

Q. What purpose was that sent for?

A. Information.

Q. If it was for information only, why on the bottom of that did you state, "We urge you to increase your lease holdings now."? Why was that included?

A. Well, to save the making of a separate circular. If you will notice, I qualified it by placing on the margin the statement I could not accept subscriptions made out of the state.

Q. But if the addressee was a resident of the state of Washington, it was to be used as a solicitation?

A. That is right.

Q. For further sales to him?

A. That is right.

Mr. Newton: I would like to offer Petitioner's Exhibit 2.

The Court: Has 3 been offered?

Mr. Newton: I offered it and Mr. Burch stated that there was no objection.

The Court: Exhibit 3 admitted.

(Testimony of Paul John Hunt.)

Mr. Burch: Who is this man Eccleston?

The Witness: Well, he is a member of the pool of lease holders.

Mr. Burch: Did he live in the state of Washington? [10] A. Yes, sir.

Mr. Burch: And did he become a member when he was a resident of this state?

The Witness: Yes, sir.

Mr. Burch: And he went to California?

The Witness: Yes.

Mr. Burch: And he gave you this address?

The Witness: Yes, sir.

Mr. Burch: And you sent him this letter?

The Witness: Yes.

Mr. Burch: That is all.

Mr. Newton: Any objection?

Mr. Burch: No objection.

The Court: Exhibit 2 admitted.

(Petitioner's Exhibit 2 for identification received in evidence.)

Q. (By Mr. Newton) Mr. Hunt, how many sales of securities have you made since the entry of the decree on February 18, approximately?

A. Oh, I guess about a dozen.

Q. And aggregating about how much?

A. I guess about \$2,000.

Q. A dozen for about \$2,000. Probably a few more than that, aren't there? It is my recollection that you said that there were closer to fifteen or twenty. [11]

A. Well, I furnished Mr. Weber a statement the

(Testimony of Paul John Hunt.)

other day of the sales made in addition to those set out in the stipulation or in his affidavit.

(Document marked Petitioner's Exhibit 5 for identification.)

Q. (By Mr. Newton) I hand you Petitioner's Exhibit 5 for identification, and I will ask you if that is what you refer to as having been furnished,—setting out the sales made by you since the compilation of the sales as of April 12 which were included in the stipulation? A. Yes.

Q. Or Mr. Weber's affidavit?

A. Yes, I believe that is the statement I gave you.

Q. I believe you had it prepared for him, did you not? A. Yes.

Mr. Newton: I would like to offer it, if you have no objection.

Mr. Burch: We have no objection to the list of sales. This was made after service of the injunction upon you?

The Witness: Yes, sir.

Q. (By Mr. Newton) In connection with the use by you of the letter in regard to the analysis, this was some [12] of the results of that mailing, was it, Mr. Hunt? A. No.

Q. It was not?

A. Oh, to some extent it may have been, yes.

Q. And in connection with those sales, those persons who paid in full have received their contracts, have they? A. I believe so.

Q. Are those contracts sent to the purchasers

(Testimony of Paul John Hunt.)

through the mails? I think that is also reflected in the stipulation.

A. Yes, generally, that is true.

Q. That is your general method? A. Yes.

Q. And would you say that has been the method since February 18, 1946? A. Yes.

Q. And that since February 18 some contracts have been sent to purchasers through the mail?

A. In the state of Washington.

Q. To residents in the state of Washington?

A. Yes, sir, to them only.

The Court: Has Exhibit 5 been offered?

Mr. Newton: I would like to offer it in evidence if I did not.

The Court: Any objection? [13]

Mr. Burch: No objection.

The Court: Exhibit 5 admitted.

(Petitioner's Exhibit 5 for identification was received in evidence.)

Mr. Newton: That is all we have.

Mr. Burch: That is all.

(Witness excused.)

The Court: That is the case except argument?

Mr. Newton: Yes.

The Court: Do you have anything further, Mr. Burch?

Mr. Burch: No.

The Court: The record will show each side rests. Is that right?

Mr. Newton: Petitioner rests.

CERTIFICATE

I, James R. Royce, do hereby certify that I am official court reporter for the above-entitled Court, and as such was in attendance upon the hearing of the foregoing matter.

I further certify that the above transcript is a true and correct record of the matters as therein set forth.

/s/ JAMES R. ROYSE,

Official Court Reporter.

[Endorsed]: Filed: Sept. 13, 1946. [14]

[Title of District Court and Cause.]

June 11, 1946

Black, J.

(Final argument by counsel—recess.)

The Court: We will proceed with the matter of Paul John Hunt.

Mr. Newton: Mr. Burch desires to ask the witness a couple of more questions.

The Court: Are you satisfied that he may do so?

Mr. Newton: Yes.

The Court: The case is again reopened.

PAUL JOHN HUNT

having been previously sworn, was recalled and testified as follows:

Direct Examination

By Mr. Burch:

Q. Before the injunction was served upon you how many [1*] sales were made in interstate com-

(Testimony of Paul John Hunt.)

merce outside of the state of Washington?

A. Well, I personally admitted only one.

Q. Well, just explain to the court how that one or any other one than that was made. How many were made?

Mr. Newton: If the court please, I object to this line of questioning. The decree was entered, that there was a violation of the Securities Act, and the contemnor consented and admitted the allegations of the complaint which are on file. The complaint specifically alleges the Securities Act had been violated. Now, to what extent it had been violated, it does not seem to me to be relevant to a contempt proceeding.

Mr. Burch: If your Honor please, the object of these questions is this, that they go to show that there was no willful engaging in sales in interstate commerce. There were only two sales made; and they were made under the most extenuating circumstances.

Mr. Newton: If the court please——

Mr. Burch: In other words, we are not charged with fraud. We are not charged with anything willful, but there were two inadvertent sales, one in Nevada and one in California. The whole matter is based upon those two, and I would like to show that they [2] were made under the most extenuating circumstances and without solicitation; yet they were made.

Mr. Newton: I renew my objection to the line

* Page numbering appearing at foot of page of original certified Transcript of Record.

(Testimony of Paul John Hunt.)

of questioning. The question of good faith as to the sales made upon which entry of the decree was based is not before the court. If we want to thresh that out, the only way naturally we can go into it would be to call the witnesses, the persons who bought this and bring out the exact circumstances under which they bought it. I don't think it is properly before the court, and we did not even think of subpoenaing such witnesses.

The Court: Well, counsel, I take it that this defendant is seeking to present this evidence for the purpose of mitigating the penalty in event the court should determine that there has been contempt. On that phase I take it the court is entitled to hear the evidence. The fact that the court hears it does not mean that the court subscribes to the fact that a man can come into court and consent to a judgment against him when plaintiff might have witnesses available and then thereafter, if the witnesses are no longer available, seek to undo the judgment which he consented to. But the fact that the court might not allow this evidence for the purpose of vacating [3] the judgment would not necessarily mean that the court was not permitted to hear it for such light, if any, as it might throw upon the question of contempt and the grievousness thereof. Objection overruled.

A. The sale made in California, which I admitted,—in that case the original purchaser of a lease——

(Testimony of Paul John Hunt.)

Q. I am sorry. Which one are you talking about?

The Court: California.

A. I was trying to think of the name, Mr. Newton. Do you know the name, Mr. Weber? Anyway, the sale was made to a woman named Purcell living in Fresno, California. Part of that time her mother and father, while living in Seattle, subscribed for a lease. Before it was completely paid, the father died. The mother moved to California to make her home with the daughter, and later assigned that interest to the daughter, and the daughter completed the payment. Some time later, several months later, the daughter mailed in a subscription for an additional interest, which was accepted.

Q. Now, I wish you would explain to the court how the sale in Nevada occurred?

A. You mean in Idaho?

Q. I mean in Idaho.

A. The first I knew of that sale was when it was brought [4] to my attention by the representative of the commission. It was a sale made to a person who bought leases while living in Spokane, Washington. Later she married a man living in Mullan, Idaho; and on one of her frequent visits to Spokane, according to my Spokane representative, she made an additional purchase, stating to our Spokane representative——

Mr. Newton: I object to that as hearsay.

The Court: I think so.

The Witness: As far as I am concerned, there

(Testimony of Paul John Hunt.)

was no sale made in Idaho. As far as my records are concerned, it came to me with a Spokane address.

Mr. Burch: That is all.

Cross Examination

By Mr. Newton:

Q. Mr. Hunt, you had carried an address for Mrs. Lusian at Idaho?

A. That is correct.

Q. You carry an address for her in Mullan, Idaho. As a matter of fact, she lived there for four years, isn't that a fact?

A. That is not my understanding.

Q. You did send her literature to Mullan, Idaho?

A. Yes.

Q. And you received money from her from Mullan, Idaho? [5]

A. I don't recall as to that. Payments were made through the Spokane office.

Q. You sent securities to her at Mullan, Idaho, through the mail?

A. I cannot say as to that; I don't know.

Q. The only address you had for her is Mullan, Idaho, is that correct?

A. No, we had an address for several years in Spokane.

Q. I mean the only address, current address, you had was Mullan, Idaho.

A. I believe that is true, yes.

Q. Now, you mentioned the Purcell sale in Cali-

(Testimony of Paul John Hunt.)

fornia and the circumstances surrounding it. Now, that was not the only sale in California, was it?

A. I believe it was.

Q. Are you familiar with the Sergeant Wertzbaugher sale, made to Wertzbaugher when he was in Spokane.

A. Except from the information I got from the Spokane representative.

Q. You didn't check up from your own records where he lived?

A. Oh, I discussed the matter after this investigation started with my Spokane representative and was told the circumstances concerning the sale.

Q. Did you determine whether or not he was a resident [6] of Los Angeles or Spokane at the time he made the purchase?

A. The original sale was not made to him. It was made to a resident of Spokane, and he assigned to him; if you are speaking of the soldier.

Q. Yes, the soldier lived in San Francisco, and, as a matter of fact he lives in Los Angeles. I talked with him there.

A. I understand he left there.

Q. You had no information of Sergeant Wertzbaugher being on a visit to Spokane and Sergeant Wertzbaugher giving the check? Did you ever see the check given by Sergeant Wertzbaugher to your Spokane representative?

A. I have never seen it.

Q. Did you ever check up on who paid the money? A. No.

(Testimony of Paul John Hunt.)

Q. You don't know. What about the sale to Mrs. Ashmore in St. Petersburg?

A. She made the statement in writing that she was only a temporary resident and she expected to return after the war.

Q. At the time you made the sale didn't you know she changed her mind and she so advised you?

A. No.

Q. What about the Gerlinger sale in Minnesota? [7]

A. I know nothing about it.

Q. That was made by some of your agents, was it?

A. I don't know anything about a sale there.

Q. You know there was a sale made to Mr. George Gerlinger in Minnesota, a resident of Minnesota?

A. No, I had no personal knowledge of such a sale, no. Neither did my office.

Q. Mr. Hunt, you have agents outside of Seattle, do you not? A. Yes.

Q. You have an agent in Spokane?

A. Yes.

Q. And you have maintained an office in Spokane? A. Yes.

Q. You maintain an office in Yakima.

A. Yes.

Q. And have a representative there?

A. Yes.

Q. And have agents in Seattle? A. Yes.

(Testimony of Paul John Hunt.)

Q. And apparently these agents do make sales for you? A. That is right.

Q. For which you collect money?

A. That is right.

Q. Do you know all the sales they make? In connection [8] with the Mullan, Idaho, sale for instance, did you ever check the sale in Mullan, Idaho, made by the Spokane representative?

A. Except to discuss it with my Spokane representative after it was brought to my attention through this investigation.

Q. Your agents are all selling the same securities? A. That is right.

Q. The securities which they are selling are part of the same issues sold out of your office?

A. Yes.

Q. They are securities issued by you?

A. Yes.

Q. It is not a corporation; they are issued by you; you are the issuer? A. That is right.

Q. And you reside in Washington?

A. I do.

Mr. Newton: That is all.

(Witness excused.)

The Court: Both sides rest again?

Mr. Newton: The Petitioner has nothing further to offer.

The Court: Mr. Burch have you anything?

Mr. Burch: No. [9]

The Court: All right. Both parties rest again.

CERTIFICATE

I, James R. Royse, do hereby certify that I am official court reporter for the above-entitled Court, and as such was in attendance upon the hearing of the foregoing matter.

I further certify that the above transcript is a true and correct record of the matters as therein set forth.

/s/ JAMES R. ROYSE,
Official Court Reporter.

[Endorsed]: Filed: Sept. 18, 1946.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE UNITED
STATES CIRCUIT COURT OF APPEALS,
NINTH CIRCUIT.

Please take notice that the defendant, Paul John Hunt, whose address is 5103 Arcade Building, Seattle, Washington, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the order made and entered in the above-entitled action and filed in the office of the Clerk of the District Court of the United States for the Western District of Washington, Northern Division, on the 12th day of August, 1946, adjudging appellant guilty of contempt of Court on the charge of violating an injunctive order previously entered on February 18, 1946, under Civil Action

file No. 1480, in the said District Court, and ordering appellant to pay a fine of Four Hundred Dollars.

Dated at Seattle this 21st day of August, 1946.

LEWIE WILLIAMS,
FRED'K R. BURCH,
Attorneys for Appellant.

A true copy: Attest:

MILLARD P. THOMAS,
Clerk.

(Seal) By /s/ TRUMAN EGGER,
Chief Deputy.

[Title of District Court and Cause.]

DOCKET ENTRIES

June 4, 1946:

Filed Application for Order to Show Cause and Affidavit of W. Forbes Webber.

Filed Order to Show Cause June 11, 1946, 10:30 a. m.

Filed Order Authorizing Prosecution of Paul John Hunt.

June 10, 1946:

Filed Reporter's Transcript of Testimony re Consent Judgment.

June 11, 1946:

Filed Stipulation between Paul John Hunt & Securities Exchange Commission (Exhibits).

June 11, 1946:

Hearing had on Order to Show Cause Why Hunt Should not be held in criminal contempt for Violation of Injunction.

After closing argument, matter taken under advisement.

June 18, 1946:

Filed Marshal's Return on Order to Show Cause, etc.

July 29, 1946:

Ent. order fixing Aug. 5, 1946, 11 a. m. for Court's Decision on Contempt Proceedings now pending. Clerk to notify counsel and John Paul Hunt. (Counsel notified.)

Aug. 5, 1946:

Court finds Mr. Hunt in contempt and imposes a fine of \$400, without costs. Judgment to be presented Aug. 12, 1946, 11 a. m.

Aug. 6, 1946:

Filed Reporter's Transcript of Court's Oral Decision.

Aug. 12, 1946:

Filed & Ent'd Order and Judgment.

Ent'd order fixing supersedeas bond on appeal at \$400.00 to be filed by noon Aug. 13, 1946.

Aug. 13, 1946:

Filed Order for Deposit of Cash in Lieu of Stay Bond.

Aug. 21, 1946:

Filed Notice of Appeal to U. S. Circuit Court of Appeals.

Mailed copy of Notice of Appeal to James E. Newton.

Date August 24, 1946.

Attest:

MILLARD P. THOMAS,
Clerk.

(Seal) By /s/ TRUMAN EGGER,
Chief Deputy.

[Endorsed]: Filed: Aug. 21, 1946.

[Endorsed]: Filed in Circuit Court of Appeals
Sept. 3, 1946.

[Endorsed]: No. 11419. United States Circuit Court of Appeals for the Ninth Circuit. Paul John Hunt, Appellant, vs. Securities and Exchange Commission, Appellee. Transcript of Record Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed: September 16, 1946.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 11419

UNITED STATES OF AMERICA, ex. rel.,
THE SECURITIES and EXCHANGE
COMMISSION,

Appellee,

vs.

PAUL JOHN HUNT,

Appellant.

Appellant hereby designated the entire transcript on appeal in the above cause for printing.

STATEMENT OF POINT UPON WHICH
APPELLANT INTENDS TO RELY ON
APPEAL.

1. The injunctive order made and entered on February 18, 1946, in cause No. 1480 in the United States District Court for the Western District of Washington, Northern Division, does not, either in terms or by implication, enjoin appellant from continuing his intrastate business and/or using the mails therein under the State Law which grants him that privilege. (R.7.)

2. To construe said injunction to be applicable to intrastate business and/or the use of the mails therein would be directly at variance with the terms of the Securities Act of 1933 as amended, which reads as follows:

“Nothing in this title shall affect the jurisdiction of the Securities Commission (or any agency or office performing like function) of any State or Territory of the United States, or the District of Columbia, over any security or any person.”

Sec. 18 of said Act.

3. Under the caption of “Exempted Securities” we find the following provision:

Sec. 3 (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities;*

“(a) (11) Any security which is a part of an issue sold only to persons resident within a single State or Territory where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory.”

Securities Act of 1933 as amended. Sec. 3

(a) (11)

4. The foregoing section supplants the former Sec 5 (c) which reads as follows:

“(c) The provisions of this section relating to the use of the mails shall not apply to the sale of any security where the issue of which it is a part is sold only to persons resident within a single State or Territory, where the issuer of such securities is a person resident and doing business within, or, if a corporation, incorporated by and doing business within such State or Territory.”

Sec. 3 a (11) exempts intrastate business from the provisions of Section 5 of the Securities Act of 1933, as amended.

When the Decree of Permanent Injunction of February 18, 1946, was ordered and as a part thereof the court states: "Provided that the foregoing shall not apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act of 1933, as amended." (R.7)

"(a) A security shall be exempt from the operation of such provisions of the Act as by their terms do not apply to an 'exempted security' or to 'exempted securities' if—(2) The business of such issuer is managed by such State or political subdivision or by a board of officers appointed by such State or political subdivision."

General Rules and Regulations under the Securities Exchange Act of 1934. Rule X-3 A 12-2. Also Testimony of Paul John Hunt. (R—)

5. That appellant has in no way infractia the terms of the injunctive order of February 18, 1946, issued in cause number 1480, and upon this appeal will rely upon the following undisputed facts.

"Since the decree of injunction against Paul John Hunt entered by this Court of February 18, 1946, however, the sale of such securities has been restricted exclusively to persons resident in the State of Washington."

Stipulation of Facts. By the Attorneys.
(R19)

6. "The defendant, Paul John Hunt with actual knowledge of the contents of said decree of injunction and of all the proceedings in said cause, Civil Action No. 1480, having since the entry of said decree of injunction on February 18, 1946, sold securities in the State of Washington and to residents of said state only." By the Court.

Order and Judgment (R.30)

7. That appellant at all times herein mentioned was doing business in the State of Washington under the permission of the Director of Licenses of said state. This fact is not denied nor even questioned by the appellee.

See Testimony of Paul John Hunt, (R—)

/s/ LEWIE WILLIAMS,

/s/ FRED'K R. BURCH,

Attorneys for Appellant.

[Endorsed]: Filed: Sept. 25, 1946.

